

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

DEREK DWANYE SMITH, )  
Plaintiff, )  
v. ) Case No. CIV-22-645-J  
OKLAHOMA COUNTY, BOARD OF )  
COUNTY COMMISSIONERS OF )  
OKLAHOMA, et al., )  
Defendants. )

## **ORDER**

Plaintiff, an Oklahoma prisoner, filed a pro se complaint alleging violations of his Eighth Amendment rights under 42 U.S.C. § 1983. This matter was referred to United States Magistrate Judge Suzanne Mitchell consistent with 28 U.S.C. § 626(b)(1)(B) [Doc. No. 4]. On December 29, 2022, Plaintiff filed an Amended Complaint [Doc. No. 17]. Judge Mitchell has issued a Report and Recommendation [Doc. No. 20] recommending the Court dismiss Plaintiff's Amended Complaint without prejudice for failure to state a claim. Plaintiff was advised of his right to object to the Report and Recommendation by March 21, 2023. On March 23, 2023, Plaintiff filed a Motion to Produce and Amend Claim (Motion) [Doc. No. 22], which this Court construes as Plaintiff's response to the Report and Recommendation, and a Motion for Application for Appointment of Counsel [Doc. No. 21].

In his Motion, Plaintiff sets forth additional supporting facts for his claims, as well as other individuals who he alleges should be defendants in this case. Having carefully reviewed Plaintiff's Motion, the Court concludes that even with the additional supporting facts, Plaintiff has failed to state a claim. Specifically, Plaintiff has not adequately identified any policy to establish municipal liability and has not pled an underlying constitutional violation. Additionally, while Plaintiff's

additional supporting facts indicate that he was exposed to, and bitten by, bedbugs, mere exposure to, or bites from, bedbugs does not state a claim of deliberate indifference. *See* cases cited in Report and Recommendation [Doc. No. 20] at 12-13.

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 20], DENIES Plaintiff's Motion to Produce and Amend Claim [Doc. No. 22], DISMISSES Plaintiff's Amended Complaint without prejudice for failure to state a claim, and DENIES Plaintiff's Motion for Application for Appointment of Counsel [Doc. No. 21] as MOOT.

IT IS SO ORDERED this 28<sup>th</sup> day of March, 2023.

  
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BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE